IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos 25 & 26 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DHANUSHYA FINANCE PRIVATE LIMITED

Versus

PANKAJ SURESHCHANDRA MODI

Appearance:

Mr.Soparkar,learned senior advocate with
MR AMAR N BHATT for Petitioners
MR MB GANDHI for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2-4

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 15/04/2002

COMMON ORAL JUDGEMENT

1. Heard Mr.Soparkar,learned senior advocate for Mr.Bhatt for the petitioner - original defendant No.1 and Mr.Gandhi, learned advocate, who appeared for respondent - original plaintiff. During hearing I was taken through

the orders under challenge passed by the learned Chamber Judge, Court No.12 below Application Exh.5 in Civil Suit No.5827/2001 on 31.12.2001 which is under challenge in Revision Application No.26/2002 and the order passed below Application Exh.5 on the same Suit on 28.12.2001 which is under challenge in Revision Application No.25/2002. While taking me through the petitions and the orders under challenge, with the documents attached thereto, it is the contention of Mr.Soparkar that the learned Chamber Judge has committed error in allowing the aforesaid Application ex parte. He has also taken me through the Application Exh.5 wherein the plaintiff has prayed for direction from the trial court. By the order dated 28.12.2001, the learned Chamber Judge has appointed Commissioner to prepare the map and to do local inspection/inventory at the suit site after giving prior written intimation to both the parties and the plaintiff was directed to deposit a sum of Rs.750/--. It is the contention of Mr.Soparkar that the learned Chamber Judge has committed error while passing such order, which, according to him, is required to be set aside. While taking me through the order dated 31.12.2001, it is the contention of Mr.Soparkar that the learned Chamber Judge was not right in giving direction ex parte and the learned Chamber Judge has directed to maintain status quo of the suit property as on the date of the order i.e. on 31.12.2001.

2. Mr.Gandhi appearing for the respondent plaintiff has also vehemently urged that the Revision Applications are not maintainable and further that this court should not entertain such Revision Applications and that the petitioner - defendant has to approach the learned Chamber Judge and further that there is no jurisdictional error for which this court is required to interfere with such orders.

3. Considered the submissions made before me and the fact that the order under challenge is an ex parte order passed by the learned Chamber judge wherein the defendants were directed to furnish particulars as highlighted in the letter dated 29.7.99 as well as in respect of their right and title over the suit property. Petitioner has approached this court directly by filling these Revision Applications and this court has while issuing rule protected the petitioner defendant by granting interim relief as prayed for by the petitioner in respective Revision Applications and the same were extended from time to time, which is in force till today.

4. Accordingly without expressing anything on the

contentions raised before me by the counsel appearing in the matters, it will be in the fitness of things to direct the petitioner - defendant to approach the learned Chamber Judge and the learned Chamber Judge is accordingly directed to decide afresh the application of the plaintiff in accordance with law. As the interim relief is operating till today, the order of status quo granted earlier shall continue till the learned Chamber Judge decides the application Exh.5. The petitioner defendant shall file reply to the Application Exh.5 on or before 26.4.2002 with direction that the same should be served to the plaintiff and the Rejoinder, if any is required, the plaintiff shall file the same within 2 weeks thereafter and the learned Chamber Judge is directed to dispose of the application Exh.5 on or before 30.6.2002 in accordance with law, without being influenced by the orders passed from time to time. Accordingly the orders passed by the learned Chamber Judge are set aside. Both the Revision Applications are accordingly disposed of. Rule is made absolute in each matter in the above terms. No order as to costs.

(D.K.Trivedi,J)

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